

No. 6491-4-Lab-71 19779 —In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal, Haryana, Faridabad in respect of the dispute between the workmen and the management of M/s Municipal Committee, N. I. T., Faridabad.

BEFORE SHRI O. P. SHARMA, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No 80 of 1970

between

THE WORKMEN AND THE MANAGEMENT OF M/S MUNICIPAL COMMITTEE, N. I. T., FARIDABAD

Present :—

Shri Onkar Parshad, for the workmen.

Shri Krishan Lal Gulati, Assistant Secretary with Shri H. R. Dua, their authorised representative.

AWARD

The following disputes existing between the Municipal Committee, Faridabad and their employees were referred for adjudication to this Tribunal by order No. ID/FD/206-I/11344-48, dated 17th April, 1970, of the Governor of Haryana, in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

- (1) Whether the workmen of the Octroi Department should be given festival holidays alike the workmen of other Departments of the Committee. If so ; with what details and from which date ?
- (2) Whether the workmen are entitled to get the same grades of pay as have been given by the Government of Haryana to its own employees. If so ; with what details and from which date ?

On receipt of the reference usual notices were given to the parties and they put in their respective written statements. The workmen reiterated their claim for grant of grades, festival holidays etc., as per their demand notice dated 24th September, 1969. The respondent Municipal Committee resisted the above demands and raised a preliminary objection that the activities of the Committee did not constitute an industry and hence the reference was not valid. It was further urged that the demands in question had not been properly espoused by a substantial number of workmen of the Committee. The following issues arose for determination in the case :—

- (1) Whether the demands have not been espoused by a substantial number of workmen of the respondent Committee ?
- (2) Whether the respondent Committee has been debarred by the High Court of the Punjab and Haryana to give the pay scales as demanded by the workmen and what is its effect on the reference ?
- (3) Whether the activities of the respondent Committee constitute an industry and the reference is valid ?
- (4) Whether the workmen of the Octroi Department should be given festival holidays alike the workmen of other Department of the Committee. If so, with what details and from which date ?
- (5) Whether the workmen are entitled to get the same grades of pay as have been given by the Government of Haryana to its own employees. If so ; with what details and from which date ?

It is, however, not necessary to go into the above issues because, as per the statements of the authorised representatives of the parties, . There is at present no dispute between them. The demand for grades of pay covered by Item No. 2 of the reference has already been conceded by the respondent Committee and the concerned workmen have been allowed the grades asked for as per the revised scales of pay sanctioned by the Governor of Haryana for its employees with effect from 1st February, 1969.

So far as the demand for the grant of festival holidays as per Item No. 1 of the reference is concerned, the respondent Committee has undertaken to examine the case of the workmen and if after consultations with the others committees in the State an agreed formula is evolved the concerned workmen will be granted these holidays in due course. The workmen have consequently withdrawn their demands for the present.

In the circumstances, the concerned workmen are not entitled to any further relief in the present case and the reference is answered accordingly but without making any order as to costs.

Dated the 8th June, 1971.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad

No. 579, dated the 8th June, 1971.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

Dated 8th June, 1971.

O. P. SHARMA,
Presiding Officer,
Industrial Tribunal, Haryana, Faridabad.

No. 6287-4 Lab-71/19781.—In pursuance of the provisions of section 17 of the Industrial Disputes Act 1947 (Act No. XIV of 1947), the Governor of Haryana, is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak in respect of the dispute between the workmen and the management of M/s Jawala Textile Mills, Delhi Road, Gurgaon.

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, HARYANA ROHTAK

Reference No. 185 of 1970

between

SHRI PRAN NATH JOSHI, WORKMAN, C.O GENERAL SECRETARY, TEXTILE WORKERS UNION, BADRI NIWAS, RAILWAY ROAD, GURGAON CANTT. AND THE MANAGEMENT OF M/S JAWALA TEXTILE MILLS, DELHI ROAD, GURGAON

Present :

Shri C.B. Kaushik, for the workmen.

Shri G.D. Verma, for the management.

AWARD

Shri Pran Nath Joshi was serving as an Accounts Clerk in M/s Jawala Textile Mills, Delhi Road, Gurgaon. He complained that the management have wrongfully terminated his service and coerced him to sign a letter of resignation in order to save themselves against the wrongful termination of his services. This gave rise to an industrial dispute and the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette notification No. ID/GG/310-70/30351, dated 25th September 1970 :—

“Whether the termination of services of Shri Pran Nath Joshi was justified and in order. If not ; to what relief is he entitled ?

On receipt of the reference usual notices were issued to the parties in response to which a statement of claim was filed on behalf of the workmen and the management filed their written statement. The case of the workman as given in the claim statement is that he was appointed as an Accounts Clerk on 7th April, 1966 and was re-designated as a Time Keeper and was confirmed in the same category, —*vide* the management letter, dated 19th December, 1969. It is alleged that on some recommendation of a friend of Seth S.P. Vermani, proprietor of the respondent mills one Shri Amarjit Singh was appointed as a Head Time Keeper in his place and he was posted in the godown of the Mills. It is further alleged that the workmen protested against this injustice, as a result of which the management was annoyed and on 23rd April, 1970 at about 5.30 p.m. he was called by Shri Vermani in his office and he started abusing him as per his natural habit and told him that he had stolen a bundle of manufactured goods and had sold it in the market. It is further alleged that the workman denied these allegations, but the employer forced him to resign under the threat that if he did not do so he would be handed over to the police and so the workman had no alternative but to tender his resignation.

The case of the management on the other hand is that the workman Shri Joshi voluntarily resigned on 22nd April, 1970 and his resignation was accepted and as per his request his accounts were settled and he accepted payment in full and final settlement of his dues and signed the payment voucher. It is further alleged that the workman approached the Labour Officer and requested him to issue a service certificate and the management issued the necessary certificate on 24th April, 1970. Under these circumstances it is alleged that there being no termination of the services of the workman by the management, there was no industrial dispute between the parties. It is also submitted that the workman never raised any demand and for this reason also no reference could be made to this Court. The pleadings of the parties gave rise to the following issues —

(1) whether the workman Shri P. N. Joshi resigned his service ?

(2) Whether the reference is invalid because the workman Shri P.N. Joshi himself did not raise any dispute?

(3) If the above issues are found in favour of the workman, whether the termination of services of Shri P.N. Joshi was justified and in order? If not, to what relief is he entitled?

Issue No. 1.—This is the most important issue in this case. Shri M.P. Sharma, Manager of the respondent concern has appeared in support of the case of the management and in rebuttal the workman appeared as his own witness and produced one Siri Santosh Kumar a co-worker who, however, does not support his version that a letter of resignation was taken from the workman by force. The witness says that he does not know the circumstances under which the services of the workman stood terminated.

I have carefully considered the evidence produced by the parties and in my opinion there is no truth in the version of the workman that he was called in the office of the employer Shri Vermani on 23rd April, 1970 and was compelled to sign a back dated letter of resignation. He finds that the letter of resignation Exhibit M.W.1/2 is wholly in the hand of workman. The workman also acknowledged the receipt of service certificate, dated 24th April, 1970 and this receipt is dated 25th April, 1970. It is not the version of the workman that he was compelled to put different dates on a number of papers. It is true that the workman did write a complaint addressed to the Superintendent of Police, Gurgaon which is dated 24th April, 1970 and in which he alleged that on 23rd April, 1970 a letter of resignation had been taken from him forcibly and he was compelled to back date, etc. The workman however, does not give any explanation in his evidence or in the complaint addressed to the Police as to how he acknowledged the receipt of the service certificate which is dated 25th April, 1970. It may be that there might have been a case of theft and the workman fearing police action, might have resigned in order to escape harrassment by the police but there appears to be no truth in the story as given in Court that he was called in the office of the employer and there made to sit for 2 or 3 hours and then the Security Officer was called who was told to give him beating in case to refuse the resign. It would not be out of place to point out that the story that the Security Officer was called and was told to give him a beating in case he refused to resign, does not find any mention in the complaint addressed to the Superintendent of Police. In my opinion, it is satisfactory established that the letter of resignation given by the workman was not taken any coercion. I find this issue in favour of the management.

Issue No. 2.—Since the case of the workman was that he did not voluntarily resign his service, the order of reference can not be held to be invalid simply because the notice of demand was not given by the workman under his own signature. I find this issue in favour of the workman.

Issue No. 3.—In view of my findings on issue No. 1 this issue does not arise. The workman is not entitled to any relief. I give my award accordingly. No order as to costs.

Dated the 5th June, 1971.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 1048, dated Rohtak, the 5th June, 1971

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,
Presiding Officer,
Labour Court, Haryana,
Rohtak.

No. 6286-4-1Lab-71/19783.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and the management of M/s Vanteshwara Steel Rolling Mills (P) Ltd., Ballabgarh.

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT,
HARYANA, ROHTAK

Reference No. 197 of 1970

between

SHRI TRIBHWAN WORKMAN C/O INTUC MAZDOOR COUNCIL MARKET NO. 1,
FARIDABAD AND THE MANAGEMENT OF M/S VANTATESHWARA STEEL
ROLLING MILLS (P) LTD., BALLABGARH

Present :

Nemo, for the workman.

Nemo, for the management.

AWARD

Shri Tribhwan was working as Tonsman in M/s Vanteshwara Steel Rolling Mills (P) Ltd, Ballabgarh. He alleges that he has not been allowed to attend to his duties with effect from 15th July, 1970 without intimating to him any reason. This gave rise to an industrial dispute. Accordingly, the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Government Gazette Notification No. ID/FD/587-A/36168, dated 3rd November, 1970.

Whether the termination of services of Shri Tribhwan was justified and in order? If not, to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties. The notice of the management was sent under registered cover acknowledgement for the date fixed due. Shri Amar Singh, General Secretary, INTUC Mazdoor Council was present on behalf of the workman. The service of the management could not be effected and so it was ordered that fresh notice be issued for 24th May, 1971. Notice under registered cover was again sent to the management. This time the service of the management was effected but on the date fixed neither party was present. Since the workman has not shown that the termination of his service was not justified I hold that he is not entitled to any relief. I give my award accordingly. No order as to costs.

P. N. THUKRAL,

Dated the 4th June, 1971.

Presiding Officer,

Labour Court, Haryana, Rohtak.

No. 1047, dated the 5th June, 1971

Forwarded four copies to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P. N. THUKRAL,

Presiding Officer,

Labour Court, Haryana, Rohtak.

No. 6294-4Lab-71/19791.—In pursuance of the provisions of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Haryana, Rohtak, in respect of the dispute between the workmen and the management of Messrs Auto and Metal Engineers, Faridabad.

BEFORE SHRI P.N. THUKRAL, PRESIDING OFFICER, LABOUR COURT, HARYANA, ROHTAK

Reference No. 53 of 1970

between

SHRI JAMALUDDIN, WORKMAN, C/O FARIDABAD ENGINEERING WORKERS UNION,
FARIDABAD AND THE MANAGEMENT OF MESSRS AUTO AND METAL ENGINEERS,
FARIDABAD

Present :

Shri Darshan Singh, for the workman.

Shri R.C. Sharma, for the management.

AWARD

Shri Jamaluddin was serving as a fitter in Messrs Auto and Metal Engineers, Faridabad. His services were terminated and this gave rise to an industrial dispute. Accordingly the Governor of Haryana, in exercise of the powers conferred by clause (c) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, referred the following dispute to this Court for adjudication,—*vide* Gazette Notification No. ID/FD/297-A/23291, dated 3rd August, 1970:—

Whether the termination of services of Shri Jamaluddin was justified and in order? If not, to what relief is he entitled?

On receipt of the reference usual notices were issued to the parties by my learned predecessor Shri O.P. Sharma in response to which a statement of claim was filed on behalf of the workman and the management filed their written statement. A preliminary objection raised on behalf of the management is that there is no industrial dispute between the workman and the management as stated in the order of reference. It is pleaded that the Government have turned an individual dispute between Jamal-ud-din, and the management into an industrial dispute which is not in the power of the Government and so the reference is bad. The notice of demand served by the workman is also said to be vague and no reference could be made on the basis of such a vague notice.

On merits it is pleaded that Shri Jamal-ud-din, was employed as a fitter on probation and he continued to be so when his services were terminated. The pleadings of the parties gave rise to the following issues:—

- (1) Whether there is no industrial dispute between the workman and the management as contemplated under the Industrial Disputes Act, 1947 ?
- (2) Whether the workman did not serve the management with a demand notice and the demand notice received by the management through the Conciliation Officer is vague? If so; with what effect ?
- (3) Whether the workman was a probationer and not a permanent worker? If so ; with what effect ?
- (4) Whether the termination of services of Shri Jamal-ud-din was justified and in order ? If not ; to what relief is he entitled ?

Issues Nos. 1 and 2.—These issues are inter-connected and can be discussed together. The learned representative of the management has not explained in what manner the notice of demand is vague. Further this demand notice is addressed to the Factory Manager of the respondent concern and in this demand notice the workman has alleged that his services have been terminated wrongfully. The management do not deny the receipt of this demand notice. The management further admitted that before the workman gave a demand notice, Ex. M. 6, he had also previously made a grievance of the fact that his services had been wrongfully terminated. It is true that this notice was addressed to the Labour Officer-cum-Conciliation Officer but the management were duly informed of this complaint and they made certain payments to the workman. It is, therefore, not correct to say that the management had no notice that the workman was aggrieved by reason of the termination of his services before the Conciliation proceedings were initiated on the basis of a demand notice which was given by the workman subsequently. Before the Conciliation Officer also the management never took up the stand that there was no industrial dispute between the parties. On the contrary they tried to justify their order terminating the services of the workman. An industrial dispute, therefore, did exist and the Government was fully empowered to refer the dispute for adjudication. I find this issue in favour of the workman.

Issue No. 3.—Ex.M.1 is the letter of appointment which was given by the management to the workman Shri Jamal-ud-din. This latter is dated 1st April, 1969 and according to the terms of the letter of appointment the applicant was appointed on probation in the first instance for a period of 6 months. The letter of appointment provides that after the expiry of the first period of probation if he is retained or allowed to work and no order is issued for confirmation in writing then it would be deemed that his probationary period had been further extended for 3 months and even after the completion of this extended period if no confirmation letter is issued it would be further considered that his probationary period had been extended for 6 months. This means that according to the terms of letter of appointment the period of probation of the applicant could continue up to 15 months.

Shri V.K. Jain, General Manager of the respondent concern admits that the Model Standing Orders are applicable to the respondent factory and that no notice was given to the applicant before terminating his services. The Government of Haryana have published the Model Standing Orders,—*Vide* Notification No. G.S.R/144/C.A.20/46/S.15/Amd./69, dated 25th September, 1969. Sub-clause (b) of clause 3 of the Model Standing Order defines a probationer as under :—

- (i) A 'probationer' is a workman who is provisionally employed to fill vacancy in a permanent post and has not been confirmed as permanent in accordance with these standing orders. Ordinarily the period of probation shall be six months, but it may be extended by a period of three months at a time at the discretion of the management, if the management considers it necessary in any case to further adjudge the work and merits of a workman. The maximum probation period shall, however, in no case extend beyond one year.
- (ii) In computing the period of probation the days on which the workman was absent due to authorised leave, sickness, maternity leave, accident, lock-out or a strike (which is not illegal) or temporary closure of the undertaking shall be included.
- (iii) If a workman continues in service on the expiry of the 13th (Thirteenth) month of service, he shall be deemed to have been automatically confirmed in his appointment.

(iv) If a permanent workman is employed as a probationer in a new post or a vacancy and his work during probation is not found satisfactory, he may at any time during the probationary period be reverted to his substantive post and shall not lose his lien on his permanent post on this account.

It is clear from the definition of the "probationer" as given above that the terms in the letter of appointment with regard to the period of probation are in conflict with the Model Standing Orders. The Standing Orders have a statutory force. If any condition in the letter of appointment is in conflict with the provisions of the Standing Orders then it would have no value. According to the Model Standing Orders there is no automatic extension of period of probation and it was incumbent upon the management to specifically extend the period of probation for a period of three months at a time, if after the expiry of the period of six months it was considered necessary to further adjudge the work and merits of the workman concerned. Further the maximum period of probation can in no case extend beyond one year. In my opinion the only interpretation which can be put on the Model Standing Orders is that the period of probation in the first instance cannot go beyond six months and the period of probation can be extended only if the management specifically do so. The management have not extended the period of probation in the present case. In my opinion, therefore, the applicant was not a probationer as defined in the Model Standing Orders at the time when his services were terminated. I, therefore, find this issue in favour of the workman.

Issue No. 4.—Even if it is held that the workman was a probationer at the time of the termination of his service because under the general law there is no automatic confirmation still it cannot be held that the termination of his service was justified. The object of appointing a workman on probation is to see whether he is fit to be absorbed into service on permanent basis. According to the provisions of the Model Standing Orders as also according to the terms of letter of appointment, the management had a period of six months in the first instance to determine the worth of the workman. The spirit of the law is that the period of probation is to be extended only if the management have applied their mind with regard to the suitability of the workman and are unable to decide whether to confirm him or not and they want further time to adjudge the work on merits. Further the management are bound to give a fair chance to the workman to show his worth during the period of his probation or the period for which his probationary period has been extended or is deemed to have been extended. If the work of the workman does not come up to the satisfaction of the management his services can be terminated only on the expiry of the period of probation or extended period of probation, i.e., after the expiry of nine months or one year but in the present case we find that the services of the workman were terminated after the expiry of 10 months and the perusal of the evidence of Shri V.K. Jain, General Manager of the respondent concern makes it very clear that at the time of terminating the service of the workman, the management did not even bother to consider as to whether he was fit to be confirmed or not. Shri Jain in his examination-in-chief even does not say that the services of the workman were terminated because his work was not found satisfactory. The learned representative of the workman in cross-examination made an attempt to elicit whether in the opinion of the management the work of the workman was satisfactory. Shri Jain stated that "his work was so so, not very outstanding nor even bad". Shri Jain further stated "there was no complaint or report against him". This shows that the management had not applied their mind on this question as to whether the work of the workman was satisfactory. There is not an iota of evidence on the record to show that the workman was not considered suitable for being confirmed and his services were terminated during the period of the probation by reason of his unsatisfactory work. On the other hand the perusal of the evidence of Shri Jain clearly shows that the management are under the impression that during the period of probation they can play fast and loose with the life of their workman and can terminate his services at their sweet pleasure. I am afraid, this is not the position in law. The management can only terminate the service of the workman if at the end of the period of probation they come to the conclusion that his work has not been satisfactory and he is not fit enough to be confirmed. In this case if the work of the applicant had not been satisfactory and it was not considered desirable to confirm him on this account Shri Jain would have said so specifically.

After carefully considering the evidence produced by the parties I am of the view that it is not possible to uphold the validity of the order of the management terminating the services of the workman. The workman is, therefore, entitled to be reinstated with continuity of service and full back wages. I give my award accordingly. No order as to costs.

P.N. THUKRAL.

The 2nd June, 1971

Presiding Officer,
Labour Court, Haryana, Rohtak.

No. 1041, dated Rohtak, the 4th June, 1971

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh, as required under section 15 of the Industrial Disputes Act, 1947.

P.N. THUKRAL.

Presiding Officer,
Labour Court, Haryana, Rohtak.